

Office of Workers' Compensation Programs, Labor

§ 10.134

representative and the employing agency of the decision.

[52 FR 10511, Apr. 1, 1987]

§ 10.132 Time and place of hearing; prehearing conference.

The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant, the claimant's representative, and the employing agency at least 15 days prior to the hearing. When practicable, the hearing will be set at a time and place convenient for the claimant. At the request of the claimant, the Office representative may schedule a prehearing conference to further define or clarify the issues. Request for such a conference must be made to the Office representative in writing at least 5 days prior to the scheduled date of the hearing. The decision whether or not to schedule a prehearing conference shall be solely within the discretion of the Office representative.

[52 FR 105011, Apr. 1, 1987]

§ 10.133 Conduct of hearing.

(a) In conducting the hearing, the Office representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 5 of the Administrative Procedure Act, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded. The recording, either by magnetic tape or by transcription, shall be made a part of the case record.

(b) Pursuant to 5 U.S.C. 8126 the Office may whenever necessary:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence, with respect to proceedings conducted for the purpose of determining the validity of any claim under this part.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10512, Apr. 1, 1987]

§ 10.134 Subpoenas; witness fees.

(a) When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A claimant who desires the issuance of a subpoena shall, not less than 20 days prior to the date fixed for the hearing, file with the Office representative a written request therefor, designating the witness or documents to be produced, and describing the address and location thereof with sufficient particularity to permit such witness or documents to be found. The request for a subpoena shall state the pertinent facts which the claimant expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Office hearing representative, and shall be served either in person by an authorized representative of the Office or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. Where service is made in person by an authorized Office representative, such representative shall make an affidavit stating that he or she personally served a copy of the subpoena upon the person named therein. Where service is by certified mail, the signed returned post office receipt shall serve as proof of service.

(b) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the Office shall be paid the same fees and mileage as are paid for like services in the District